

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515-6315

MEMORANDUM

TO: Members, Subcommittee on Contracting and Infrastructure
FROM: Kweisi Mfume, Chairman
DATE: July 12, 2022
RE: Subcommittee Hybrid Hearing: “A Review and Assessment of the SBA HUBZone Program”

The Committee on Small Business Subcommittee on Contracting and Infrastructure will meet for a hybrid hearing titled “A Review and Assessment of the SBA HUBZone Program.” The hearing is scheduled to begin at **10:00 A.M. on Thursday, July 14, 2022, in person in 2360 Rayburn House Office Building and via the Zoom platform.**

The hearing will focus on the Historically Underutilized Business Zone (HUBZone) program that is administered and overseen by the Small Business Administration. The hearing will examine the program considering the changes made in law and in regulations since 2018. Members will also have an opportunity to learn from program participants about how the program is working, its challenges and benefits, and what additional reforms are needed.

Panel

- Mr. Matthew Schoonover, Managing Member, Schoonover & Moriarty LLC, Olathe, KS
- Ms. Shirley Bailey, CEO, Summit Federal Services, LLC & HUBZone Council Chair, Oakland, MD
- Ms. Inés Rivas-Hutchings, Founder & President, Intec Group LLC & Women in Construction Owners and Executives (WCOE) Member, Paducah, KY
- Mr. Brent Lillard, CEO & Co-Founder, GovSmart, Inc., Charlottesville, VA

Program Overview

In 1997, Congress created the HUBZone Program as part of the Small Business Reauthorization Act.¹ The HUBZone program is a contracting assistance program based on locality.² It provides small businesses located in economically distressed areas with greater access to Federal contracting opportunities to promote economic development. By lowering barriers for entry into the Federal marketplace, an incentive is created for these firms to sell their products and services to the government, which in turn creates jobs and stimulates the local economy.

¹ Small Business Reauthorization Act of 1997, Pub. L. No. 105-135, 111 Stat. 2592 (1997).

² Robert Jay Dilger, Cong. Rsch Serv., R41268, *Small Business Administration HUBZone Program* (Updated Feb. 2022) [hereinafter Dilger R41268].

Participation in the HUBZone program requires formal certification. “Qualified HUBZone Small Business Concerns,” meaning those who have been formally certified by the SBA,³ may take advantage of the various incentives available to them. For example, qualified HUBZone firms are eligible for set asides (in which competition is restricted exclusively to HUBZone firms), sole-source contracts (contracts awarded without competition) and a ten percent price evaluation preference during full and open competition.⁴ The HUBZone Price Evaluation preference provides a competitive advantage by stipulating that if the price offered by the HUBZone firm is less than 10% higher than the price offered by a large business, the price offered by the HUBZone firm shall be deemed as being lower.⁵

In addition, the Small Business Act sets a government-wide goal for participation by qualified HUBZone small business concerns of not less than 3 percent, both for prime contracts and subcontracts.⁶ However, that goal has never been met.

HUBZone Eligibility Criteria

To qualify for the HUBZone program, a business must:

- Be small pursuant to SBA size standards,
- Be at least 51 percent owned and controlled by U.S. citizens, an Alaska Native Corporation, an Indian tribe, a Native Hawaiian Organization, a community development corporation or an agricultural cooperative,
- Have its principal office located in a HUBZone, and
- At least 35% of its employees must reside in a HUBZone.⁷

With respect to the third criteria -that the firm must be in a HUBZone- there are seven types of geographic areas that qualify as such. These are: qualified census tracts (QCTs), qualified nonmetropolitan counties, Indian reservations or Indian country, military base closure areas, Governor-designated covered areas, qualified disaster areas, and redesignated areas.⁸

HUBZone Reforms

In 2017, Congress made several amendments to the program.⁹ Among the changes, it: 1) refined eligibility for base closure areas, 2) modified the formula used for qualified nonmetropolitan counties which increased the number of areas with said designation, 3) created the Governor-designated covered areas as a new HUBZone category, 4) required SBA to create a HUBZone online tool that would depict HUBZones, and 5) allowed qualified HUBZone firms designated as such on or before December 31, 2019 to retain their HUBZone status until the HUBZone map is updated in accordance with the results of the 2020 census (currently anticipated to take place on June 30, 2023).¹⁰

³ 15 U.S.C. §657a(b)(4)

⁴ 15 U.S.C. §657a(c)(2)-(c)(3)

⁵ 15 U.S.C. §657a(c)(3)

⁶ 15 U.S.C. §644(g)(1)(A)(iii)

⁷ 15 U.S.C. §657a; 13 C.F.R. §126.200

⁸ 15 U.S.C. §657a(b)(1)

⁹ National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, §1701, 131 Stat. 1283, 1795-1803(2017).

¹⁰ *Id.*

Throughout the years, multiple reforms have been made to provide stability, certainty, and flexibility when it comes to complying with eligibility requirements. For example, it could be argued that the fact that a QCT or a qualified non-metropolitan county ceases to be a HUBZone is a good thing because the program’s objectives have been met.¹¹ Nevertheless, considering that HUBZones change based on economic data and any fluctuations in this data could drive a company to lose its eligibility in a short period of time after locating in a HUBZone, Congress added redesignated areas as HUBZones in the year 2000.¹² Redesignated areas are QCTs and qualified nonmetropolitan counties that have lost their HUBZone designation. They generally can maintain HUBZone eligibility for three more years.¹³

SBA did a comprehensive overhaul of the program’s regulations in the form of a final rule in 2019, making important changes to implement new statutory provisions, ease confusion, and provide flexibility.¹⁴ For example, the final rule allows firms that invest in certain HUBZones – by purchasing a building or entering a long-term lease of 10 years or longer – to maintain HUBZone certification for a period of 10 years even if that location no longer qualifies as a HUBZone.¹⁵

In that same vein, the rule modified the requirement to have 35% of a firm’s employees reside in a HUBZone. The rule explained that “a challenge HUBZone participants have faced over the last two decades is understanding the definitions of key components of the program requirements” and that “once certified, it is unrealistic to expect a business concern or their employees to relocate in order to attempt to maintain the concern’s HUBZone status.”¹⁶ Thus, the rule now allows for an individual who has lived in a HUBZone for at least 180 days before certification or recertification and continues to live there for at least 180 days immediately after, to be treated as a HUBZone resident employee even if that individual later moves to an area that is not a HUBZone or the area loses its HUBZone designation.¹⁷ Given that this change could mean that a HUBZone may not have any employees residing at a HUBZone at any given point, it has been criticized by the SBA’s Office of Inspector General for being inconsistent with legislative intent.¹⁸ As part of the hearing, the Committee intends to get a better sense of how these and other reforms are working for program participants.

Challenges Reported by HUBZone Firms

Limited Use of the Program

As previously stated, the HUBZone goal has never been met. In FY 2020, 2.44% or \$13.6 billion was awarded to HUBZone firms in prime contracts and 1.65% or \$4.2 billion was awarded to HUBZone firms in subcontracts.¹⁹

¹¹ Dilger R41268, *supra*, note 2.

¹² *Id.*

¹³ 15 U.S.C. §657a(b)(1)

¹⁴ *Small Business HUBZone Program and Government Contracting Programs*, 84 Fed. Reg. 65222 (Dec. 26, 2019) (codified at 13 C.F.R. pts 115, 121, 125, 126 and 127).

¹⁵ *Id.* See also: 13 C.F.R. §126.200

¹⁶ *Id.*

¹⁷ *Id.* See also: 13 C.F.R. §126.200

¹⁸ Small Bus. Admin. Off. of Inspector Gen., Report 22-02, *Report on the Most Serious Management and Performance Challenges Facing the Small Business Administration in Fiscal Year 2022* (Oct. 15, 2021).

¹⁹ Small Bus. Admin. Off. of Policy, Planning and Liaison, *Small Business Procurement Scorecard for FY 2020*, available at: <https://www.sba.gov/document/support-small-business-procurement-scorecard-overview>

Out of the \$13.6 billion awarded in prime contracts, only \$2.1 billion was awarded using a HUBZone preference.²⁰ Specifically, \$2 billion was awarded using HUBZone set asides, \$67.5 million was awarded in sole-source contracts and \$48.5 million through the HUBZone price evaluation preference.²¹ Moreover, \$4 billion was awarded to HUBZone firms in full and open competitions, meaning with no preference at all, and the rest – 7.5 million – was awarded using another small business preference.²² In other words, more than half of all prime contracts awarded to HUBZone firms were not awarded because of the HUBZone designation, but because the firm qualified for another small business preference, which would be the case if for example a service-disabled veteran-owned small business (SDVOSB), which also happens to be a HUBZone firm, receives a set-aside award under the SDVOSB program. These dollars count toward the HUBZone goal because the SBA’s Small Business Procurement Scorecard allows agencies to take credit in all the categories for which the small business recipient qualifies.²³

It is not clear why the program is underutilized; however, a number of factors may be contributing to federal agencies not reaching their goal. To that end, contracting reform could go a long way to improve this situation. For example, H.R. 5879, the “HUBZone Price Evaluation Preference Clarification Act of 2021,” which recently passed the House, would clarify that the HUBZone price evaluation preference applies to orders, thereby incentivizing its use. Similarly, H.R. 3065, the “Expanding Contracting Opportunities for Small Businesses Act of 2021,” would increase the sole-source thresholds for all of the contracting programs, including the HUBZone program, thereby giving contracting officers more flexibility to use the sole-source authority. This hearing represents an opportunity to hear stakeholders’ views regarding the limited use of the program and any reforms to increase the utilization of the program.

Consolidation

Consolidation is a challenge for small business utilization, including HUBZone firms. While it might be one of the reasons preventing agencies from using the HUBZone program, it deserves to be discussed separately given the adverse impacts it is having when it comes to small business utilization. The small business base has shrunk considerably in the last decade. This trend is partly due to initiatives such as Category Management and its predecessor Strategic Sourcing. In particular, Category Management consolidates requirements into government-wide and agency-wide contracting vehicles using a tier model. This results in fewer contracting opportunities awarded with a HUBZone preference overall and in fewer stand-alone contract awards (agency awarding directly to a vendor). Moreover, even if those large contracting vehicles were to be set aside or partly set aside for HUBZones, they would still limit the use of HUBZone firms because their magnitude impedes some firms from participating, especially younger HUBZone firms.

Last December, the Office of Management and Budget issued guidance detailing a series of steps the federal government would take to improve the situation with Category Management.²⁴ In particular, the guidance recategorizes all awards made to socioeconomic small businesses to a new

²⁰ Dilger R41268, *supra*, note 2.

²¹ *Id.*

²² *Id.*

²³ Small Bus. Admin. Off. of Policy, Planning and Liaison, *Goaling Guidelines*, available at: <https://www.sba.gov/document/report-sba-goaling-guidelines>

²⁴ Off. of Mgmt. & Budget, Exec. Off. of the President, M-22-03, *Advancing Equity in Federal Procurement* (Dec. 2, 2021).

tier-2 category, in an effort to encourage the use of these firms. It remains to be seen the outcome of those efforts and whether they will substantially improve the situation. In the meantime, any potential reforms to counteract consolidation would help all small businesses, including HUBZone firms.

Limited Participants

As of June 2018, 834 of the nation's 3,242 counties (approx. 25.7%) had HUBZone status, either as a qualified nonmetropolitan county or as a redesignated nonmetropolitan county.²⁵ Similarly, 20,154 of the nation's 74,002 census tracts (approx. 27.2%) had HUBZone status, either as a QCT or a redesignated QCT.²⁶ While this information does not represent all areas that qualify as HUBZones, it is a good starting point with which to contrast the number of participants. Despite the amount of HUBZone areas nationwide (which are essentially frozen),²⁷ there were 4,870 participants in the program as of May 20, 2022.²⁸

Moreover, the number of participants has decreased. In 2011, for example, the program had more than 8,500 participants.²⁹ Some believe that additional education is needed to highlight the benefits of the program and recruit more participants. Yet, others believe that companies do not see the value in getting certified since awards with HUBZone preferences are scarce. Thus, a circular problem may be going on where there are no HUBZone firms because there are not enough awards with HUBZone preferences, but there are not many contracts awarded with HUBZone preferences because contracting officers are not finding enough HUBZone firms through market research to set aside. One thing is certain: increasing the number of HUBZone awards would be the best advertisement for the program.

Need for Transparency and More Data

As previously stated, in FY 2020, 2.44% was awarded to HUBZone firms in prime contracts. However, this information alone does not provide an accurate representation of the situation. When dissecting the numbers, it becomes evident that a minimal amount of these dollars was awarded using a HUBZone preference. Thus, many supporters of the program advocate for more specificity in the Small Business Scorecard, which would provide more transparency and hold agencies accountable for their progress in meeting the small business contracting goals.

Additionally, as part of the changes made in 2018, Congress required the SBA to develop performance metrics with the purpose of measuring the program's success in promoting economic growth. Yet, there is no indication that the SBA has created these performance metrics, making it unclear whether the program is meeting its mission. Moreover, these metrics could provide valuable information to inform and improve the program.

²⁵ Dilger R41268, supra, note 2.

²⁶ *Id.*

²⁷ The SBA froze the HUBZone map when it comes to QCTs, nonmetropolitan counties and redesignated areas until the map could be updated based on the results of the 2020 census. See: *HUBZone Program: Extending Map Freeze*, 86 FR 23863 (June 21, 2021).

²⁸ E-mail from Alejandro Renteria, Deputy Associate Administrator SBA's Office of Congressional and Legislative Affairs, to Irene Rivera, Committee Staff (May 24, 2022) (on file with author).

²⁹ Dilger R41268, supra, note 2.

Conclusion

The main purpose of the HUBZone Program is to promote economic growth in those geographical locations that need it the most. However, agencies are making limited use of the program, the 3% goal has not been met and it is still unclear whether its mission is being achieved. This hearing will allow members to learn more about the program and hear about these and other issues from the perspective of HUBZone firms and stakeholders.